IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 14814 OF 2007(L)

PETITIONER:

JAYAKUMAR, AGED 25 YEARS,
S/O. JAYABALAN, "KRISHNAKRIPA", SHANGUMUGHAM,
VALLAKADAVU, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY (HOME),
GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SUB INSPECTOR OF POLICE,
KANJIRAMKULAM POLICE STATION, NEYYATTINKARA,
THIRUVANANTHAPURAM DISTRICT.

3. THE CIRCLE INSPECTOR OF POLICE,
POOVAR POLICE STATION, NEYYATTINKARA,
THIRUVANANTHAPURAM DISTRICT.

4. THE DEPUTY SUPERINTENDENT OF POLICE,
NEYYATTINKARA, THIRUVANANTHAPURAM DISTRICT.

5. THE DISTRICT SUPERINTENDENT OF POLICE
(RURAL), THIRUVANANTHAPURAM.

6. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM.

WP(C) 14814/2007

7. THE ASST.EXCISE COMMISSIONER,
THIRUVANANTHAPURAM.

8. THADAYUS, S/O. OUSEPH,
SHARMILA BHAVAN, PANACHAMOODU PUTHEN VEEDU,
MARAMANGALAM, KAZHIVOOR P.O., NEYYATTINKARA,
THIRUVANANTHAPURAM DISTRICT.

9. SUKU, S/O. APPU,
KEEZHATHILTHATU KADAYARA VEEDU, KEEZHUTHU,
PULLUVILA P.O., THIRUVANANTHAPURAM DISTRICT.

ADDITIONAL RESPONDENT NO;

10. B. MADHUSOODANAN NAIR,
S/O. BALAKRISHNA PILLAI, AGED 39 YEARS,
DEVENDU, KARUKULAM, PULLUVILA (P.O.),
THIRUVANANTHAPURAM DISTRICT.

11 COMMISSIONER OF EXCISE, THIRUVANANTHAPURAM.

(ADDITIONAL RESPONDENT NO. 10 IS IMPLEADED AS PER ORDER ON I.A. NO. 6457/2007 DATED 30.5.2007)

(R11 IS SUO MOTU IMPLEADED VIDE DIRECTION OF THIS COURT IN THE JUDGMENT DATED 30.5.2007).

ADV. SRI.GRASHIOUS KURIAKOSE
GOVT. PLEADER SRI. P.A. SALIM.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) 14814/2007

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 PHOTOCOPY OF THE TODDY SHOP LICENSE NO. 124/2007-08 IN RESPECT OF TODDY SHOP NO. 6/2007-08 ISSUED BY THE ASST. EXCISE COMMISSIONER, KOLLAM ON 3.5.2007.

EXT.P2 PHOTOCOPYH OF THE PETITION DATED 7.5.2007 SUBMITTED BEFORE THE 2ND RESPONDENT WITH COPIES TO RESPONDENTS 3 TO 5.

RESPONDENTS' EXHIBITS:

EXT.R10(a) TRUE COPY OF THE PETITION DATED 7.5.2007 FILED BEFORE THE 6TH RESPONDENT.

EXT.R10(b) TRUE COPY OF THE PETITION DATED 7.5.2007 FILED BEFORE THE EXCISE COMMISSIONER, THIRUVANANTHAPURAM.

EXT.R10(c) TRUE COPY OF THE DECISION DATED 26.4.2007 TAKEN BY THE KARUMKULAM GRAMA PANCHAYATH.

EXT.R10(d) TRUE COPY OF THE CERTIFICATE DATED 22.5.2007 ISSUED BY THE SECRETARY, KARUMKULAM GRAMA PANCHAYATH.

EXT.R10(e) TRUE COPY OF THE NEWS ITEM APPEARED IN THE KERALA KAUMUDI DAILY DATED 22.5.2007.

P.R. RAMAN & K. HEMA, JJ.
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W.P.(C) NO. 14814 OF 2007
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DATED THIS, THE 30TH DAY OF MAY, 2007.

J U D G M E N T

Raman, J.

Petitioner is a vendor in toddy as licensed by Ext.P1 issued by the Excise Department, Government of Kerala, for the year 2007-08. The licence is issued to shop No.6/2007 at Kallumukku, Thirupuram Range. Complaint of the petitioner is that he is not permitted to carry on his business and the running of the shop is obstructed at the instance of Respondents 8, 9 and Additional Respondent No.10 and their supporters and sympathizers.

2. A counter affidavit is filed for and on behalf of the Additional 10th respondent. According to him, even though a licence has been issued in favour of the petitioner, he has not started the business. He has also disputed the building as mentioned in Ext.P1 licence. It is his further case that the proposed site is within 400 metres of Pottappana Ninna Nagavally Yakshiyamma Temple, Karukulam, Thazhathil Bhagavathi Temple and several other places of religious worship and therefore, the proposed site is

in a prohibited distance as per the Kerala Abkari Shops Disposal Rules, 2002. A petition is stated to have been filed by the Janakeeya Samithi before the Excise Commissioner and according to him, Ext.P10(b) is a true copy of the said petition. It is also submitted that the local Panchayat has also taken a decision not to allow the functioning of the toddy shop in the Panchayat area.

3. The petitioner, on the other hand, would contend that the shop had started functioning on 4.5.2007 and it was on 6.5.2007 evening that the shed wherein the business was carried on was destroyed. It is also his contention that since a licence is already issued to him, he is entitled to carry on the business unobstructed by anybody and according to him, in spite of the fact that he has approached the police for necessary assistance they are not rendering any help and that is why he has come up with this writ petition. He also placed reliance on a judgment of this court in W.P(C) 15230/2007 rendered on 24.5.2007 and similar judgments and contends that this Court has taken the view that so long as a licence is in force and if police is satisfied that the shop is functioning in the licensed premises, they should see that law and order is maintained and no obstruction is caused in the running of the toddy shop.

4. The learned Government Pleader, on the other hand, would submit that if the petitioner is having a valid licence, certainly, police will render necessary help in case any illegal obstruction is caused for the running of the shop.

5. In the circumstances, we direct that in case the petitioner is carrying on the business in toddy as licensed by Ext.P1 in the premises noted in it, so long as Ext.P1 is in force, there cannot be any physical obstruction caused to the running of the business by him. However, if there is any objection by any of the respondents that the said premises is within a prohibited distance, equally they are entitled to raise their objection before the concerned authorities. Hence if the Commissioner of Excise has received any such complaint, certainly, he will consider and dispose of the same in accordance with law, after hearing the parties. Respondents 2 and 3 will give necessary protection to the petitioner in case he is carrying on the business in toddy in the licensed premises as per Ext.P1 and in case there is any illegal obstruction caused to the said business by any of the party respondents or their associates or sympathizers. However, it is open to the party respondents to express their protest in any peaceful manner. There will also be a direction to the Commissioner of Excise who is suo motu impleaded for the limited purpose, to consider and dispose of Ext.R10(b)

as expeditiously as possible, at any rate within two weeks from the date of receipt of a copy of this judgment. It is open to the petitioner or respondents to produce a copy of this judgment before the Commissioner of Excise along with a copy of the writ petition and the counter affidavit for information and compliance.

The writ petition is disposed of as above.

Issue copy of this order on usual terms to the parties.

P.R. RAMAN,
(JUDGE)

K. HEMA,
(JUDGE)

knc/-